

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

To: Chief, Wireline Competition Bureau

**OPPOSITION OF BROADBAND CORP.  
TO PETITION FOR WAIVER**

Broadband Corp. (“BC”), by counsel and pursuant to Sections 1.409 and 1.415 of the Commission’s Rules, hereby opposes the Petition for Waiver (“Petition”) filed on June 26, 2012 by CenturyLink.<sup>1</sup> CenturyLink claims that because BC charges more than \$720 annually for broadband service, certain undefined areas it covers should be re-designated as “unserved” so CenturyLink can obtain more than \$1.4 million in Connect America Fund (“CAF”) Phase I funding. Because CenturyLink’s argument rests on an

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<sup>1</sup> See *Public Notice*, “Wireline Competition Bureau Seeks Comment on CenturyLink Petition for Waiver of Certain High-Cost Universal Service Rules,” DA 12-1007, rel. June 27, 2012 (“*Public Notice*”). The *Public Notice* established a July 12, 2012 deadline for the filing of responsive pleadings. Accordingly, this Opposition is timely filed.

arbitrary standard it devised to suit its needs, there is no legal basis for it. The Petition thus should be dismissed or denied.

### **Introduction**

BC is a fixed wireless broadband provider that provides service to approximately 650 customers in Central Minnesota.<sup>2</sup> BC uses unlicensed spectrum in the 900 MHz, 2.4 GHz and 5 GHz bands and “lightly licensed” spectrum in the 3650-3700 MHz band. In many areas where BC operates, it is the only provider of terrestrial fixed broadband service. In other areas, BC competes directly with CenturyLink and other broadband providers. Some of the areas BC serves are within CenturyLink’s telephone service areas, but CenturyLink has chosen to not deploy broadband service in many of these areas. As a standalone broadband provider, BC receives no federal support to help subsidize its construction or operations.

### **Discussion**

CenturyLink claims that there are a total of 1,820 living units within BC’s coverage that should be re-designated as “unserved.”<sup>3</sup> As the sole basis for this allegation, CenturyLink asserts that BC charges more than \$720 in non-recurring (*e.g.*, installation) and recurring (*e.g.*, monthly service) fees for a customer’s first year of broadband service, and that this is not a “reasonable price.”<sup>4</sup> According to CenturyLink, BC’s service “exhibits the characteristics that led the Commission to disregard satellite

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<sup>2</sup> The Declaration of Anthony Will, BC’s Vice President, attached hereto as Exhibit 1, certifies to the truthfulness and accuracy of the facts stated herein.

<sup>3</sup> See Petition at Exhibit B. BC is listed twice. The 1,820 aggregate number combines the two entries, though CenturyLink fails to justify these amounts.

<sup>4</sup> See Petition at Exhibit A, p.4.

broadband service for purposes of deciding which areas are ‘unserved’ under CAF Phase I.”<sup>5</sup>

CneturyLink’s Petition is legally defective and should be dismissed or denied. For purposes of determining areas where Phase I support may be provided, the Commission relies on its definition of “broadband” adopted in the *USF/ICC Transformation Order* – speed of at least 4 Mbps/1 Mbps to “provide subscribers in rural and high cost areas with the ability to use critical broadband applications in a manner reasonably comparable to broadband subscribers in urban areas.”<sup>6</sup> The Commission expressly declined to adopt performance metrics, even for CAF Phase I recipients,<sup>7</sup> and adopted a one-time fixed payment of \$775 per location rather than adopting a detailed economic cost model.

In the *Second Order on Reconsideration*, the Commission flatly rejected CenturyLink’s efforts to impose additional service quality standards on WISPs “for several reasons.”<sup>8</sup>

We acknowledge that some consumers may live in areas ineligible for CAF Phase I support even though the broadband available to them does not currently meet our goals. The Commission chose in CAF Phase I, however, to focus limited resources on deployments to extend broadband

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<sup>5</sup> Petition at 7.

<sup>6</sup> *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; and Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (“*USF/ICC Transformation Order*”), at ¶ 94.

<sup>7</sup> See *id.* at ¶ 98.

<sup>8</sup> *In the Matter of the Connect America Fund, A National Broadband Plan for Our future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service – Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Second Order on Reconsideration, FCC 12-47, rel. Apr. 25 (“*Second Order on Reconsideration*”), at ¶ 15. This argument was presented in ITTA Petition and in CenturyLink’s ex parte presentation. See letter from Melissa E. Newman to Marlene H. Dortch, FCC Secretary, WC Docket No. 10-90, *et al.*, dated Apr. 23, 2012.

to some of the millions of unserved Americans who lack access to broadband entirely, rather than to drive faster speeds to those who already have service. We are not persuaded that the decision about the more pressing need was unreasonable. Moreover, we are not persuaded that permitting CAF Phase I recipients to overbuild other broadband providers represents the most efficient use of limited CAF Phase I support. *In addition, we conclude that we do not have an adequate record at this time to make a determination about how high a competitor's price must be—either alone or in combination with usage limits—before we would support overbuilding that competitor, a critical component of petitioners' request.*<sup>9</sup>

Clearly, for purposes of CAF Phase I, the Commission has no interest in upsetting the simple standards it adopted to expedite support to CenturyLink and other price cap carriers.

Nevertheless, CenturyLink picks a single element of BC's service – the cost of broadband service – to suggest that areas BC serves should be “unserved” for CAF Phase I purposes. In undertaking this analysis, CenturyLink arbitrarily contrives the \$720 figure based on its own pricing for broadband service. CenturyLink's use and proposed justification of this number does not constitute an adequate record, and the Commission has not requested this information for CAF Phase I. Instead, and in contrast to procedures it is adopting for CAF Phase II, the Commission made the wise and considered decision to keep the CAF Phase I process simple and uncomplicated so that price cap carriers like CenturyLink could access funding with a minimum of administrative burdens.

Assuming *arguendo* the Commission were to reverse course and entertain CenturyLink's argument, it does not convey the truth. As stated in the attached Declaration of Anthony Will, BC generally charges less for installation than CenturyLink suggests. BC provides promotional pricing and many customers do not pay *any*

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<sup>9</sup> *Second Order on Reconsideration* at ¶ 15 (footnote omitted) (emphasis added).

installation charge. CenturyLink's reliance on a review of BC's web site ignores the day in, day out promotions that BC employs to attract and retain its customers. When these lower or non-existent installation fees are taken into account, the actual cost is likely lower than the \$720 amount CenturyLink arbitrarily sets.<sup>10</sup>

Even assuming the Commission is willing to entertain CenturyLink's argument, its proposed criterion ignores a host of other performance qualities and service packages associated with BC's broadband service. It would be irresponsible for the Commission to look at a single performance metric and determine that CenturyLink should be entitled to \$1.4 million in CAF Phase I subsidies.

The Commission wisely decided in the *Second Order on Reconsideration* to avoid imposing pricing minimums on incumbent fixed broadband providers. That decision no doubt anticipated the arbitrariness of selecting performance metrics and the line-drawing in which the Commission would be required to engage in order to make qualitative judgments about a particular broadband provider's service. That BC provides broadband service to approximately 650 customers, many of whom apparently can get service from CenturyLink, attests to the real motive behind its claim – to get more than \$1.4 million in federal subsidies so it can better compete with unsubsidized broadband providers like BC. Such a result would be contrary to the simple rules and considered policies applicable to the CAF Phase I process.

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<sup>10</sup> Mr. Will's Declaration also notes inaccuracies in the installation cost and download speed of BC's service.

### **Conclusion**

CenturyLink's Petition is predicated on the imposition of a single performance metric that the Commission has concluded is totally irrelevant to whether an area is "unserved." The Commission should dismiss CenturyLink's Petition with respect to BC.

Respectfully submitted,

**BROADBAND CORP.**

Date: July 12, 2012

By: /s/ Stephen E. Coran  
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## **Exhibit 1**

## **Declaration of Anthony Will**

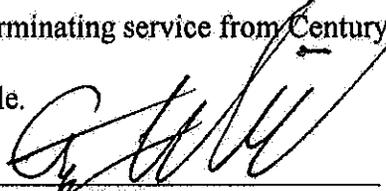
My name is Anthony Will, and I am Vice President of Broadband Corp. (“BC”).

I am making this Declaration in support of BC’s Opposition to a Petition for Waiver filed on June 26, 2012 by CenturyLink. I hereby certify under penalty of perjury that the statements of fact contained in this Declaration are true and correct to the best of my knowledge, information and belief.

1. BC is a wireless Internet service provider (“WISP”) that provides fixed wireless broadband service to approximately 650 customers in Central Minnesota. BC uses unlicensed spectrum in the 900 MHz, 2.4 GHz and 5 GHz bands and the “lightly licensed” 3650-3700 MHz. In some of our service areas, BC is the only terrestrial broadband provider because neither DSL nor cable service extend their lines to these areas. In other areas, we compete head-to-head with CenturyLink and other companies. BC receives no federal universal service support.

2. CenturyLink’s Petition argues that 1,820 living units within BC’s coverage area should be re-designated as “unserved” because BC charges more than \$720 for the first year of service (non-recurring and monthly recurring fees). CenturyLink ignores the fact that, through periodic promotions, a large number of customers do not pay the full amount of our posted installation fee, which is actually \$150, not \$250 as CenturyLink states. In fact, many pay no installation fee at all. When this taken into account, our annual fee is likely below the amounts CenturyLink calculates. Also, our download speed is 3 Mbps, not 1 Mbps as CenturyLink asserts.

3. Price is only one measure of service. Another is reliability, and I believe that BC provides superior reliability in areas where it competes with CenturyLink. Many of our customers sign up for BC's service after terminating service from CenturyLink because they believe our service is more reliable.

  
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Anthony Will

07-10-12  
Date